

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

KANSAS CITY FIRE FIGHTERS,  
LOCAL 42,

Petitioner,

v.

CITY OF KANSAS CITY

Respondent,

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Public Case No. R 2000-046

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of Kansas City Fire Fighters, Local 42 (hereinafter referred to as the Union) to represent certain employees of the City of Kansas City (hereinafter referred to as the City). The Union seeks to represent a bargaining unit consisting of all Airport Police Officers, Traffic Control Officers, and Sergeants providing security services for the City of Kansas City International Airport. The City objects to the proposed unit on four grounds: first, the positions in question are police within the meaning of Section 105.510, RSMo. 1994; second, the positions in question are confidential employees; third, the positions in question are security guards and should not be represented by a labor organization that also represents individuals over which the security guards exercise security duties; and fourth, the sergeants are supervisors. A hearing on the matter was held on April 17, 2000, in Kansas City, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Chairman John A. Birch, Employee Member LeRoy Kraemer, and Employer Member Robert Douglass. At the hearing, the parties were given full

opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

### **FINDINGS OF FACT**

Kansas City is a Charter City within the State of Missouri. The City has a police department, the Kansas City Police Department (KCPD), which is under the exclusive supervision and control of the Kansas City Board of Police Commissioners.

The City also has an Aviation Department. The Aviation Department is responsible for the operation of the Kansas City International Airport (KCI). The airport complex sits on seventeen (17) square miles of land and is comprised of the airfield, terminals, parking lots, and operational buildings. Also on the airport property is a large hotel, a convenience store, retail stores, restaurants, eight to ten car rental agencies, farmland, the TWA overhaul base, catering companies, a fire station, and numerous public streets. The airport complex and property is larger than many of the surrounding cities, towns, and villages.

Within the Aviation Department is the Airport Police Division. The Airport Police Division is comprised of 100 positions: one Chief, one Captain, two Lieutenants, seven Sergeants, forty-nine Airport Police officers, eighteen Traffic Control Officers, four Security Officers (downtown airport), eleven Airport Security Monitors, and seven clerical positions.<sup>1</sup> The Airport Police Division force is larger than the police forces in most of the surrounding cities, towns, and villages.

Prior to May 1, 1995, airport security was provided by Airport Safety Officers. Airport Safety Officers held Class A Private Security Officer licenses issued by the Kansas City Board of Police Commissioners. They were also licensed to carry firearms. However, the Airport Safety Officers possessed no special arrest powers beyond those

of an ordinary citizen and their power of arrest did not extend outside the terminal buildings. If an Airport Safety Officer did make an arrest, KCPD officers were summoned to the airport and, upon their arrival, KCPD took command of the call. KCPD officers would transport the suspect to jail. In addition, Airport Safety Officers did not have a communication alert system that would permit the officers to do criminal background checks.

Airport Safety Officers could not take official police reports. If an individual had property stolen while at the airport, an Airport Safety Officer would make an internal report of the incident. However, the individual would then have to go to KCPD's North Patrol Division and file a police report. Alternatively, KCPD would come to the airport and make a police report concerning the incident.

Furthermore, if a traffic accident occurred in the street outside of a terminal building, an Airport Safety Officer would make an internal report concerning the accident. However, KCPD would have to be summoned to the airport to complete a Missouri Safety Responsibility report. At that time, KCPD was also required to send officers to the airport to enforce traffic laws in the public streets around the terminal areas. In short, KCPD had to respond to all requests for police assistance on airport property.

At that time, the American Federation of State, County, and Municipal Employees, Local 500, was the bargaining representative for the Airport Safety Officers. AFSCME, Local 500 remained the Airport Safety Officers' exclusive bargaining representative until the mid-1990s. At that time the Airport Safety Officer positions were transformed into Airport Police Officer positions.

A determination was made that the Airport Safety Officers, with their limited police powers, did not conform to Federal Aviation Administration (FAA) regulations

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<sup>1</sup> At the time of the hearing, one of the Sergeant positions was vacant.

which mandate a law enforcement presence on the airport property. The FAA has promulgated regulations for airport security at commercial airports serving passenger aircraft. The FAA regulations require that the airport operators provide law enforcement officers in the number and in a manner adequate to support its security program. The law enforcement officers must be available and committed to respond to an incident. To qualify as a law enforcement officer under the FAA regulations, the officers must be identifiable by uniform and display or carry a badge; be armed with a firearm and authorized to use it; have the authority to arrest individuals, with or without a warrant, for violations of the criminal laws of the state and local jurisdictions in which the airport is located; and complete a training program that either meets the training standards prescribed by the state or local jurisdictions for law enforcement officers with comparable functions or, if there is no prescribed standard, then training that is approved by the FAA. Therefore, to comply with FAA regulations, the City must employ law enforcement officers at KCI in order for the airport to serve passenger aircraft.

In response to the determination that the Airport Safety Officers did not meet FAA regulations requiring a law enforcement presence at KCI, the Aviation Department created the Airport Police Division. Alfred Lomax was hired as the Chief of the Airport Police. Chief Lomax had previously served 29 years with the KCPD and had risen to the rank of Deputy Chief of Police. Effective January 31, 1994, the Code of State Regulations, 17 CSR 10-2.030, was amended to authorize airport police to enforce city ordinances and state statute violations upon the public streets within the boundaries of KCI. The airport police continued to be licensed by the Kansas City Board of Police Commissioners as private security officers with a Class A license; however, 17 CSR 10-2.030 gave the Airport Police Officers a special designation within the Class A license. The state regulation gave the airport police full police authority.

On April 22, 1994, KCPD and the Airport Police Division entered into a Memorandum of Understanding whereby the Kansas City Board of Police Commissioners agreed to license the Airport Police Division as a private security organization with the duty to protect the citizens and property within the boundaries of the KCI airport. In this agreement, the KCPD recognized that Title 17 of the Code of State Regulations granted police authority to airport police to arrest, apprehend, and detain violators of the law while on KCI airport property, including all public streets within the boundaries of the airport.

In the Memorandum of Understanding, it was agreed that all calls for police response at KCI that were received by the KCPD would be forwarded to airport police for a response. In many instances, airport police handle 911 calls from KCI requiring a police response without any assistance from KCPD. Absent the existence of the airport police, KCPD would have to respond to these calls.

In the Memorandum of Understanding, it was also agreed that the airport police would use KCPD's case numbering system. Case numbers for airport police cases are intermingled with case numbers for the various KCPD patrol districts. When an Airport Police Officer takes a report within the confines of the KCI airport, KCPD North Patrol Division personnel process the report and the report becomes a part of the KCPD system. Additionally, it was agreed that the airport police would use KCPD report forms. Airport police also obtain their ticket books from the KCPD North Patrol Division.

The National Crime Information Center (NCIC) of the United States Department of Justice is the entity responsible for granting law enforcement agencies licenses to access the NCIC Alert II Computer System. Through this computer system law enforcement agencies may access criminal background information, outstanding warrant information, drivers license information, and employment information. When the

NCIC grants a law enforcement agency access to the Alert II Computer System, it assigns the law enforcement agency an ORI (originating agency identifier) number. By letter dated March 8, 1994, the Federal Bureau of Investigation informed the Missouri Highway Patrol that the Airport Police Division met the criteria for a criminal justice agency as defined by NCIC policy and that the Airport Police Division had been assigned ORI number MO0831800. Since that time, the Airport Police Division has had access to the Alert II Computer System.

Additionally, other law enforcement agencies have recognized the Airport Police Division as a law enforcement agency. The Sheriff's Department for Leavenworth County, Kansas has included the Airport Police Division as one of the law enforcement agencies in its Operation 500, a cooperative law enforcement program to capture inmates that escape from the federal penitentiary in Leavenworth. The Airport Police Division is also one of the law enforcement agencies involved when there is an "Amber alert," a comprehensive communication system initiated upon a verified report of a missing child. Furthermore, the Airport Police Division provides mutual aid, when requested, to other law enforcement agencies. For example, the U.S. Justice Department requested the assistance of the Airport Police Division's K-9 unit to search the new federal courthouse for explosives prior to the arrival of U.S. Supreme Court Justice, Clarence Thomas. The Division's K-9 unit has also responded to mutual aid requests from the Platte County Sheriff's Department. Last fall, as part of a mutual aid agreement with KCPD, Airport Police Officers were dispatched off of KCI airport property to a commercial business called the Parking Spot. Two people had been murdered and others were injured. Airport Police Officers secured the area, preserved the crime scene, and assisted KCPD Detectives with the investigation.

The Airport Police Division requires newly hired officers to attend the KCPD Regional Police Academy and become POST-certified. The acronym POST stands for Peace Officer Standards in Training. POST-certification is required of all peace officers in the State of Missouri. To attend the KCPD Regional Police Academy, an applicant must be sponsored by a law enforcement agency. Upon graduation, record of the officers POST-certification is forwarded to the Department of Public Safety in Jefferson City, Missouri. The Department of Public Safety maintains the POST-certification records of all police officers within the State of Missouri. At the time the Airport Police Division became a law enforcement agency, the existing officers were grandfathered in on the POST-certification. However, all Airport Police Division officers are required to maintain their POST-certification by attending 48 hours of continuing education every three years from POST-certified institutions. Airport Police Division officers also participate in training programs and seminars sponsored by the KCPD. Lastly, the Airport Police Division requires its Airport Police Officer applicants to undergo the same psychological examinations as are required of applicants to other law enforcement agencies.

Since Airport Police Officers are POST-certified, they are qualified to serve on other police departments within the State of Missouri. Accordingly, a number of Airport Police Officers have left the Airport Police Division and joined other police departments. Additionally, some Airport Police Officers serve on other police departments on a reserve basis.

Since Airport Police Officers are qualified to serve on other police departments, the Airport Police Division requires the officers to sign a contract in which they agree to serve with the Airport Police Division for a minimum of thirty-six months. If the officers

leave prior to completing their thirty-six months, they must reimburse the Airport Police Division for the cost of their training.

With the transformation of the Airport Safety Officers into Airport Police Officers, the City initiated the removal of the officers from AFSCME, Local 500. The City reasoned that the Airport Safety Officer had acquired police officer duties. As such, these individuals would now be responsible for investigating fellow union members. The City distributed ballots to each officer. Each officer could vote to remain in the union or to not remain in the union. In addition, Chief Lomax called each officer into his office and explained that officers choosing to be removed from the union would be reclassified from an L pay classification to an M pay classification. If an officer chose to be reclassified, the officer would receive a five percent raise. If an officer chose to remain in the union, the officer would be permitted to transfer to another bargaining unit job classification. All of the officers chose to be reclassified. The City held meetings with AFSCME, Local 500 officials concerning the removal of the officers from the union. The AFSCME officials agreed that the Airport Police Officers did not belong in its bargaining unit.

Airport Police Officers are divided into two classifications: Airport Police Officer I's and Airport Police Officer II's (collectively referred to as Airport Police Officers). Airport Police Officer I's and Airport Police Officer II's perform the same duties and functions. However, Airport Police Officer II's must also possess an Emergency Medical Technician certificate and be certified to work in the Airport Police Communications Center. Airport Police Officers receive law enforcement training. Additionally, Airport Police Officers wear recognized law enforcement uniforms, badges, and carry firearms.

Airport Police Officers function as law enforcement officers on a daily basis. Airport Police Officers are charged with enforcing city ordinances, enforcing state laws,



maintaining order, and preventing, detecting, and investigating crimes on KCI airport property. They respond to all 911 calls made from airport property requesting police assistance. If someone were assaulted in the Marriott Hotel, the Airport Police Officers would be the investigating officers. Airport Police Officers can arrest for Kansas City ordinance violations, misdemeanors, and felonies. If a suspect resists arrest, that suspect is charged with resisting the arrest of a police officer. Airport Police Officers can also detain an individual suspected of committing a crime. Once a suspect is in custody, Airport Police Officers must Mirandize the suspect prior to questioning him or her. They can place the suspect in the Airport Police detention facility. Airport Police Officers also write citations for municipal ordinance violations, as do KCPD officers. While acting in their capacity within the confines of the airport, Airport Police Officers have the same qualified and official immunities as KCPD officers. Furthermore, Airport Police Officers can use deadly force, as can KCPD officers.

Airport Police Officers can also pull over a vehicle if the vehicle owner has a warrant out for his or her arrest in another jurisdiction. Airport Police Officers can pull a vehicle over for probable cause that an ordinance or statute has been violated. They can pull over a vehicle for a non-moving violation such as expired plates.

Airport Police Officers work eight-hour shifts. Each shift is broken down into two four-hour blocks. Assignments are rotated every four hours. In this way each officer performs a variety of assignments. Airport Police Officers are assigned to patrol the airfield (ramp), the airport terminals, or the public streets (road). All Airport Police Officers are trained and qualified to perform all three assignments.

The airfield or ramp area consists of the runways and taxiways. It is a fenced secured area. No one is permitted in the ramp area without a proper badge or identification card. The officer assigned to ramp duty (the ramp officer), by FAA

regulation, must spend a minimum of one half hour at an entry gate checking entering vehicles and individuals' identification cards and badges. If an unauthorized vehicle or person must enter the ramp area, the ramp office must escort and monitor the vehicle or person.

In addition, the ramp officer, by means of a four-wheel drive vehicle, patrols the fence line to ensure that there have been no breaches in security. The ramp officer also checks all cargo areas located within the ramp area. The ramp officer checks runways and taxiways for hazards to the aircraft. Runway and taxiway lighting is also checked by the ramp officer.

The ramp officer responds to all aircraft alerts. There are three types of alerts. Under an Alert I, the pilot reports a problem with the aircraft and requests emergency vehicles standby. In an Alert II, the pilot requests that emergency vehicles standby on the taxiway and be prepared to respond to the runway. An Alert III means that an aircraft has crashed.

If an individual by-passes security and takes a weapon onto an aircraft, Airport Police Officers respond and remove the individual from the aircraft. This has actually occurred in the past. If there is an actual hijacking of an aircraft, Airport Police Officers respond, contain the crime scene, and wait for the Federal Bureau of Investigation to respond.

Terminal duty consists of patrolling the airport terminals and the streets and parking lots adjacent to the terminals. The officers assigned to terminal duty (the terminal officers) check all doors leading to the ramp area to ensure that they are closed and secured. The terminal officer also checks the terminal for hazards to the traveling public. They try to meet all arriving flights to answer questions and assist travelers.

The terminal officers also patrol outside the terminals. They enforce the parking ordinances, issuing parking tickets to illegally parked vehicles, and watch for hazards to the traveling public. Additionally, if a traffic accident occurs on the street outside the terminal, a terminal officer would complete a Missouri Safety Responsibility Report. The terminal officers generally have vehicles assigned to them so that they can be dispatched on calls for police assistance. The terminal officers respond to any call requiring a police response within the terminal area. If a crime is committed within the terminal area, a terminal officer responds and investigates. The officer would arrest any suspect and write a police report concerning the incident. If a dispute erupts in the terminal between individuals (for example, an irate passenger and a ticket agent), the terminal officer would attempt to mediate the situation. However, if the situation escalates into an assault, the terminal officer would arrest the assailant.

Road duty consists of patrolling all areas of the airport not related to the airfield and the terminals. Officers assigned to road duty (the road officers) are assigned vehicles and are to be mobile. The road officers will be the primary officers on calls requiring police responses which are not directly related to a terminal or the airfield. This would include any of the outlying access streets and roads, parking lots, buildings, farmland, and businesses on airport property. The road officers primarily respond to traffic accidents on outlying access streets and roads. The road officers responding to a traffic accident would complete a Missouri Safety Responsibility Report. The road officers also back up and assist the terminal officers and ramp officers. At times, the road officers will enforce the speed limits on streets and roads within the airport by writing speeding tickets.

There is also a fire station located on the airport property. The Airport Police Officers would respond to any call for police assistance at the fire station. Airport Police

Officers also investigate crimes occurring at the fire station. The Airport Police Officers have investigated at least one case of property damage at the fire station.

The Airport Police Division has one Airport Police Officer (the DEA Officer) assigned to the drug enforcement task force operating at the airport. The DEA officer is an Airport Police Officer I operating under a special federal declaration. The DEA officer is a deputized federal officer with arrest powers both on and off of the airport property. The DEA officer has a continuing assignment.

The K-9 Unit consists of one Sergeant, two Airport Police Officers, and two dogs. The job of the K-9 unit is to detect explosives on airport property. The K-9 unit also receives requests from outside law enforcement agencies for assistance in searching for explosives. The K-9 officers have a continuing assignment.

The Taxicab Officer is an Airport Police Officer I responsible for enforcing laws and regulations pertaining to taxicab operations. The Taxicab Officer is located in an office in the taxicab staging area. She inspects all taxicab operators' drivers' licenses, proof of insurance, vehicle equipment, and other things necessary for taxicab operations. The Taxicab Officer also responds to disturbances between taxicab drivers. Such disturbances occur frequently.

The Property and Supply Officer is an Airport Police Officer responsible for maintaining the reports that are generated. He maintains a log showing when those reports were forwarded to the KCPD records unit. The Property and Supply Officer is also responsible for maintaining and issuing uniforms, equipment, and weapons. He prepares a summary of activity and tracks court dockets. This is a continuing assignment unless the Property and Supply Officer draws mandatory overtime. If he draws mandatory overtime, he performs ramp, terminal, and road duty along with the other Airport Police Officers.

Since the Airport Police Officer II's are EMT-certified, they respond to medical calls. Airport Police Officer II's will also, at times, work out-of-class as Acting Sergeants. When an Airport Police Officer II works as an Acting Sergeant, he or she performs the duties of a shift Sergeant. However, while working as an Acting Sergeant, an Airport Police Officer II does not receive additional compensation.

Sergeants possess all of the same police powers as Airport Police Officer I's and Airport Police Officer II's. Like Airport Police Officer II's, Sergeants possess an Emergency Medical Technician certificate and are certified to work in the Airport Police Communications Center. Sergeants also receive law enforcement training and are POST-certified. Additionally, Sergeants wear recognized law enforcement uniforms and badges, and carry firearms.

The shift Sergeant prepares the shift roster. The Sergeant makes the assignments to the Airport Police Officer I's and Airport Police Officer II's. After completing the roster, the Sergeant conducts the roll call. At the roll call, the Sergeant updates the Airport Police Officers on events occurring over the last twenty-four hours. The Sergeant does this by reading from the previous shift's log. Additionally, at the roll call, the Sergeant will impart to the Airport Police Officers any additional information which airport management wants conveyed to the officers. This type of information would include such things as the arrival of important persons and the arrival of conventioners. Upon completion of the roll call, the Airport Police Officers fall out and go to their respective assignments.

Each shift has a minimum staffing requirement. If an insufficient number of Airport Police Officers report for duty, the Sergeant must assign an officer from the previous shift to work overtime. The Sergeant will first ask for volunteers to work overtime. If no officer volunteers, the Sergeant resorts to the mandatory overtime list.

Each officer's name is placed on a list. The officer whose name appears on the top of the list is required to work overtime, unless he or she has a good reason preventing them from doing so. Once an officer works mandatory overtime, his or her name is rotated to the bottom of the list.

If an officer calls in and says he or she will not be able to come to work due to a particular reason, the Sergeant will decide whether to dock the officer time, charge the officer vacation, or charge the officer sick leave. The Sergeant will mark the appropriate box on the officer's time card. The same will hold true if an officer is late for his or her shift. Based upon the reason given by the officer, the Sergeant will dock the officer, charge the officer vacation, or charge the officer sick leave. If the officer disagrees with the Sergeant's decision, the two of them will discuss the matter. If the Sergeant and officer cannot resolve the matter, they refer it to the Captain.

Once the Sergeant completes roll call, the Sergeant will complete required paper work. The Sergeant will review the roster from the previous shift and sign off on the roster. The Sergeant also reviews the log from the previous shift and signs off on the log. Additionally, the Sergeant reviews all reports filed by the previous shift, signs off on each report, and prepares a summary of each report for management. The Sergeant will also review the time cards from his or her shift.

After completing the required paper work, the Sergeant will complete any special assignments given to him or her by the Lieutenant or the Captain. An example of such an assignment would be the investigation of an officer's conduct. Upon completion of any special assignments, the Sergeant will go on patrol. Additionally, the Sergeant will respond to calls to assist the Airport Police Officers. During blackouts, times in which all Airport Police Officers are occupied and unable to respond to calls, the Sergeant will

respond and handle calls. Since Sergeants are EMT-certified, Sergeants will also respond to medical calls.

From 11:00 p.m. to 8:00 a.m., the Sergeant is the ranking officer at the Airport Police facility. This is also true during the weekends. However, the Chief, Captain, and Lieutenants are subject to being called or paged twenty-four hours a day. If a situation arises on which the Sergeant wants to seek advice, he or she may contact one of the Lieutenants or the Captain.

The Sergeants, generally along with one of the Lieutenants, interview job applicants. The Sergeants also evaluate the Airport Police Officer I's, Airport Police Officer II's, Traffic Control Officers, and Airport Security Monitors. Evaluations are generally completed on an annual basis. However, special evaluations can be completed if necessary. Sergeants also write recommendations concerning the promotion of subordinates.

Sergeants may discipline all individuals directly under them. They can orally counsel or reprimand their subordinates. Sergeants conduct the investigations into their subordinates conduct. They then write a report concerning their findings. However, no City employee may be suspended or terminated without a predetermination hearing. The Sergeant will make an initial recommendation concerning a suspension or termination. The Sergeant's recommendation is ultimately forwarded to the Chief. After reviewing the Sergeant's recommendation, the Chief will ask for a predetermination hearing. The Chief relies on the Sergeant's recommendation in making his decision and the Chief follows the Sergeant's recommendation ninety-nine percent of the time.

The Sergeants spend ninety-five percent of their time supervising the officers under them and five percent of their time doing paperwork. They also issue daily assignments to the Airport Police Officers and Traffic Control Officers. Each shift

Sergeant is responsible for supervising the officers on their respective shifts. The K-9 Sergeant normally supervises the two Airport Police Officers on the K-9 unit. However, since the relief Sergeant position is vacant, the K-9 Sergeant is also acting as a shift relief Sergeant. Therefore, the K-9 Sergeant is also responsible for all of the officers on the shift in which he is relieving. The Taxicab/TCO/ACC Sergeant is responsible for the supervision of thirty-one employees including the Taxicab Officer, eighteen Traffic Control Officers, and eleven Security Monitors. The ID Office Sergeant is responsible for supervising three customer service representatives. The ID Office does background checks on all individuals working at the airport. This includes airport personnel and vendor personnel. The ID Office also prepares identification badges for these individuals and submits reports to the FAA. Finally, the A.M./DEA Sergeant is responsible for supervising the Property and Supply Officer, the DEA Officer, and all officers on the 7 a.m. shift.

All of the petitioned-for job classifications, including the Sergeants, are non-exempt positions under the Fair Labor Standards Act. All are paid time-and-a-half for overtime. Additionally, the City's pay classifications overlap such that an Airport Police Officer II can receive a salary greater than of a Sergeant.

The Traffic Control Officers are an integral part of the Airport Police Division. The Traffic Control Officers were brought into the Airport Police Division to assume a portion of the terminal officers duties and permit the terminal officers to spend more time inside the terminal patrolling and assisting the traveling public. Traffic Control Officers work under the supervision of an Airport Police sergeant. The Traffic Control Officers are evaluated by the Airport Police Sergeant. They are also disciplined and terminated in the same manner, as are other Airport Police Officers.



Traffic Control Officers are required to pass both a physical examination and a psychological examination. Traffic Control Officers are also required to “obtain a private officer's commission as an unarmed officer, as authorized by the Board of Police Commissioners.” However, the Traffic Control Officers do not possess the power of arrest.

The Traffic Control Officers are charged with controlling the traffic flow through the airport terminals, city streets, and parking garages. The Traffic Control Officers expedite “the safe movement of vehicular and pedestrian traffic when problems exist in the terminal areas and parking lots.” The Traffic Control Officers respond to traffic accidents and congested areas to assist the Road Officers with traffic control. The Traffic Control Officers have a three-wheel enclosed motorcycle equipped with emergency lights with which to respond to traffic accidents and congested areas.

The Traffic Control Officers are also charged with patrolling--by foot and by vehicle--the public streets around the terminals and the terminal parking garages “to enforce parking and traffic ordinances with firmness, tact and impartiality.” They also assume responsibility for the towing of vehicles violating the parking ordinances. The Traffic Control officers also enforce the parking ordinances by writing parking citations on the Missouri Uniform Traffic Ticket. This is the same ticket form used by the KCPD. When a parking ticket is issued, the Traffic Control Officer signs the ticket as the arresting officer. The tickets are processed in the same manner as the traffic tickets issued by the KCPD. The tickets are docketed by the Municipal Court. On contested parking tickets, the Traffic Control Officers must appear in Municipal Court as the law enforcement officer who issued the ticket. The Municipal Court also imposes a fine for these parking tickets. If the fines are not paid, the Municipal court issues arrest

warrants for the car owner. If the car owner is in a surrounding municipality, a police officer from that jurisdiction may arrest the car owner.

The Traffic Control Officers are also charged with detecting criminal activity. Patrolling the streets around the terminals and terminal parking garages, the Traffic Control Officers are to be alert for unattended vehicles and luggage that could pose a threat to aviation security. They must notify the communications center of any suspicious activity.

Lastly, the Traffic Control Officers monitor the activity of taxi drivers and livery vehicles that solicit business at the airport. The Traffic Control Officers patrol "taxicab and livery hold areas to ensure compliance with taxicab ordinances." They dispatch taxicabs to appropriate areas in the terminals, monitor the movement of livery vehicles, and report problems to the shift sergeant.

### **CONCLUSIONS OF LAW**

The Union seeks to represent a bargaining unit consisting of all Airport Police Officers, Traffic Control Officers, and Sergeants providing security services at the Kansas City International Airport. The City objects to the proposed bargaining unit on four grounds: first, the positions in question are police within the meaning of Section 105.510, RSMo; second, the positions in question are confidential employees; third, the positions in question are security guards and may not be represented by a labor organization which also represents individuals over which the security guards exercise security duties; and fourth, the sergeants are supervisors. As the petitioning party, the Union bears the burden of proving the appropriateness of the requested bargaining unit. *Central County Emergency 911 v. International Association of Firefighters Local 2665*, 967 S.W.2d 696, 699 (Mo. App. W.D. 1998).

The threshold question herein is whether or not the Airport Police Officers, Traffic Control Officers, and Sergeants are "police" within the meaning of Section 105.510, RSMo. If the positions in question are "police", they are excluded from the statute's coverage and this Board lacks jurisdiction. However, if the positions are not "police", they are not excluded from the statute's coverage and this Board has jurisdiction over this matter.

Section 105.510, RSMo. provides as follows:

Employees, except police, deputy sheriffs, Missouri Highway Patrolmen, Missouri National Guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing.

In *Jackson County v. Missouri State Board of Mediation*, 690 S.W.2d 400, 402-403 (Mo. banc 1985) the Missouri Supreme Court discussed the purpose of this exclusion.

The Legislature presumably excluded police and deputy sheriffs from the scope of the statute after concluding that the bargaining rights granted therein would inhibit the discipline and strict impartiality demanded of law enforcement personnel. The Legislature may well have believed that "membership in [a union] might reasonably cause friction and dissention within the police force and create prejudice and favoritism in the enforcement of the laws." *King v. Priest*, 357 Mo. 68, 206 S.W.2d 547, 555 (banc 1947).

The Court in *Jackson County* went on to state:

We think this legislative purpose can best be effectuated if the exclusion provision is interpreted to encompass those persons engaged in law enforcement who, regardless of job title, perform duties and functions substantially comparable to those performed by police and deputy sheriffs.

*Jackson County v. Missouri State Board of Mediation*, 690 S.W.2d at 403.

It is evident from the foregoing that the job title itself is not determinative. Instead, it is the duties of the employees involved that is controlling in determining

whether said employees are excluded as "police" under Section 105.510, RSMo. *International Association of Fire Fighters, Local 3228 v. City of Gladstone*, Case No. R 89-023 (SBM 1990).

As a preliminary matter, the Union has raised an intriguing point. The Union maintains that if the Board holds that the Airport Police Officers, Traffic Control Officers, and Sergeants are police within the meaning of Section 105.510, RSMo. then the City is guilty of maintaining two police forces in contravention of Sections 84.460, 84.470, and 84.770, RSMo.<sup>2</sup> During the hearing Dale Close, Assistant Legal Advisor for the Kansas

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<sup>2</sup> Section 84.460, RSMo. states:

So soon as the board created herein shall hold their first meeting, it shall be their duty to inform the chief of police and the other officers of the police force of such city that they require their attendance upon them and obedience to their orders. For failure to attend as required, and for each and every failure to obey the lawful orders of said board, the officers so notified shall be fined in any sum not exceeding five hundred dollars, to be recovered by action at law instituted by said board, in the name of the state. From and after the first meeting aforesaid, the whole of the then existing police force in such city shall pass under the exclusive management and control of the said board, and be subject to no other control and entitled to receive neither orders nor pay, except arrearages then due, from any other authority, and shall so continue, subject, however, to removal or suspension, at the discretion of said board, and with the power in said board to fill vacancies, until said board shall publicly declare that the organization of the police force, created by sections 84.350 to 84.860 is complete. Upon such public declaration, and from the time thereof thenceforward, all ordinances of such city are hereby declared null and void, so far as they conflict with sections 84.350 to 84.860 or assume to confer upon the mayor, chief of police, common council, or any other person or persons, the power to appoint, dismiss, or in any way or to any extent, employ or control any police force organized or to be organized under such ordinances, or any of them, and from and after such public declaration as aforesaid, the police force organized, or which may be organized under such ordinances, or any of them, shall cease to exist, and its functions and powers be at an end.

Section 84.470, RSMo. states:

To enable the board of police to perform the duties imposed upon them, they are hereby authorized and required, as speedily as may be, to provide for the appointment, enrollment and employment of a permanent police force for the respective cities for which they are appointed to serve, which they shall organize, uniform, equip and arm as they may judge necessary; subject always, however, to the standards, limitations and restrictions established and set forth in sections 84.480 to 84.620.

Section 84.770, RSMo. states:

The common council or municipal assembly of said cities shall have no power or authority to levy or collect any taxes or appropriate any money for the payment of any police force, other than that organized and employed under sections 84.350 to 84.860. No officer or servant of the mayor or the common council or municipal assembly of said cities shall disburse any money for the

City Police Department, explained that persons holding private security officer licenses are vested with police powers and supplement the Kansas City Police Department's overall effort to fight crime. (Tr. 141,142, and 143). *Compare, Frank v. Wabash Railroad Company*, 295 S.W.2d 16 (Mo. 1956)("Police power' is not synonymous with 'police force,' and a city may supplement the police protection which it provides by authorizing, under appropriate regulations, private persons to perform some of its police functions".) While the Board finds the Union's point interesting, the Board's jurisdiction is limited to the Missouri Public Sector Labor Law, Sections 105.500 to 105.530 RSMo. The Board is charged with determining whether or not the positions in question are "police" within the meaning of Section 105.510, RSMo. In making this determination, the Board must follow the Missouri Supreme Court's decision in *Jackson County v. Missouri State Board of Mediation*, 690 S.W.2d 400 (Mo. banc 1985). The Board has no jurisdiction to decide whether or not the City is in violation of the provisions of Chapter 84 of the Revised Statutes of Missouri. We will leave the Union's point to a court of competent jurisdiction.

We now turn our attention to the question of whether the Airport Police Officers, Traffic Control Officers, and Sergeants perform job duties and functions that are "substantially comparable to those performed by police and deputy sheriffs." *Id.* The Airport Police Officer I's, Airport Police Officer II's, and Sergeants all receive law enforcement training. They also wear recognized law enforcement uniforms and badges, and carry firearms. Additionally, Airport Police Officer I's, Airport Police Officer II's, and Sergeants function as law enforcement officers on a daily basis and are charged with enforcing city ordinances, enforcing state laws, maintaining order, and

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payment of any police force other than that organized and employed under sections 84.350 to 84.860, and the power of said mayor and common council or municipal assembly to appropriate and disburse money for the payment of the police force organized and employed under sections 84.350 to 84.860 shall be exercised as in these sections directed and not otherwise.

preventing, detecting, and investigating crimes on airport property. They respond to all 911 calls requesting police assistance, which are made from the airport. They also possess the power to arrest for ordinance violations, misdemeanors, and felonies. Airport Police Officer I's, Airport Officer II's, and Sergeants can detain individuals suspected of committing a crime. Additionally, they can use deadly force. Airport Police Officer I's, Airport Police Officer II's, and Sergeants patrol the airfield, terminals, parking lots, and public streets within the boundaries of the airport property. Finally, they can pull vehicles over for moving and non-moving violation.

Based upon the foregoing, the Airport Police Officer I's, Airport Police Officer II's, and Sergeants perform job duties and functions that are "substantially comparable to those performed by police and deputy sheriffs." *Id.* at 403. Therefore, they are "police" within the meaning of Section 105.510, RSMo. and are excluded from the statute's coverage.

However, the Traffic Control Officers present a much closer question. It is interesting to note that despite the substantial record in this case, comparatively little evidence was presented with regard to the Traffic Control Officers. The Union, which bears the burden of proof in this case, presented virtually no evidence concerning the Traffic Control Officers and failed to specifically address the issue of the Traffic Control Officers in its brief.

Based upon the record before it, the Board finds that the Traffic Control Officers perform job duties and functions "substantially comparable to those performed by police and deputy sheriffs." *Jackson County*, 690 S.W.2d at 403. The Traffic Control Officers are an integral part of the Airport Police Division. The Traffic Control Officers were brought into the Airport Police Division to assume a portion of the terminal officers' duties and permit the terminal officers to spend more time inside the terminals patrolling

and assisting the traveling public. Traffic Control Officers work under the supervision of an Airport Police Sergeant. The Traffic Control Officers are charged with controlling the traffic flow through the airport terminals, city streets, and parking garages. The Traffic Control Officers respond to traffic accidents and congested areas to assist the road officers with traffic control. The Traffic Control Officers are also charged with patrolling--by foot and by vehicle--the public streets around the terminals and the terminal parking garages "to enforce parking and traffic ordinances with firmness, tact and impartiality." They also assume responsibility for the towing of vehicles violating the parking ordinances. The Traffic Control officers also enforce the parking ordinances by writing parking citations on the Missouri Uniform Traffic Ticket. When a parking ticket is issued, the Traffic Control Officer signs the ticket as the arresting officer. If the parking ticket is contested, the Traffic Control Officer must appear in Municipal Court as the law enforcement officer who issued the ticket. The Municipal Court also imposes a fine for these parking tickets. If the fines are not paid, the Municipal Court issues arrest warrants for the car owners.

The Traffic Control Officers are also charged with detecting criminal activity. While patrolling the streets around the terminals and the terminal parking garages, the Traffic Control Officers are to be alert for unattended vehicles and luggage that could pose a threat to aviation security. They must notify the communications center of any suspicious activity.

Lastly, the Traffic Control Officers monitor the activities of taxi drivers and livery vehicles that solicit business at the airport. The Traffic Control Officers patrol "taxicab and livery hold areas to ensure compliance with taxicab ordinances." They dispatch taxicabs to appropriate areas in the terminals, monitor the movement of livery vehicles, and report problems to the shift sergeant.

Based upon the foregoing, the Board concludes that the Traffic Control Officers perform job duties and functions “substantially comparable to those performed by police and deputy sheriffs.” *Id.* Therefore, the Traffic Control Officers are “police” within the meaning of Section 105.510, RSMo. and excluded from the coverage of the statute.

The Board holds that the Airport Police Officers, Traffic Control Officers, and Sergeants are “police” within the meaning of Section 105.510, RSMo. Given the Board's holding, it is unnecessary to address the City's other objections to the proposed bargaining unit.

### **ORDER**

The State Board of Mediation holds that the petitioned-for positions are “police” within the meaning of Section 105.510, RSMo. The Board therefore lacks jurisdiction in this matter. Accordingly, the petition is hereby dismissed.

Signed this 24<sup>th</sup> day of August, 2000.

#### STATE BOARD OF MEDIATION

/s/ John A. Birch  
John A. Birch, Chairman

(SEAL)

/s/ LeRoy Kraemer  
LeRoy Kraemer, Employee Member

/s/ Robert Douglass  
Robert Douglass, Employer Member